Petition not p...

No. 666 (33)

FILED

FEB 14 1944

CHARLES ELMORE CROPLEY
CLERK

IN THE
UNITED STATES SUPREME COURT

WOODY JOHNSON, in his Representative capacity as a Designated Agent of WILLIE PHILPOT, INEZ COLEMAN, WILLIE MACK, BEATRICE STEWART WALKER, WILLIE MAE BARNES, ROSE W. HAWKINS, ETHEL COLEMAN, EUGENE GARDNER, IRMA MACK and LILLIAN MADISON.

Petitioners.

vs.

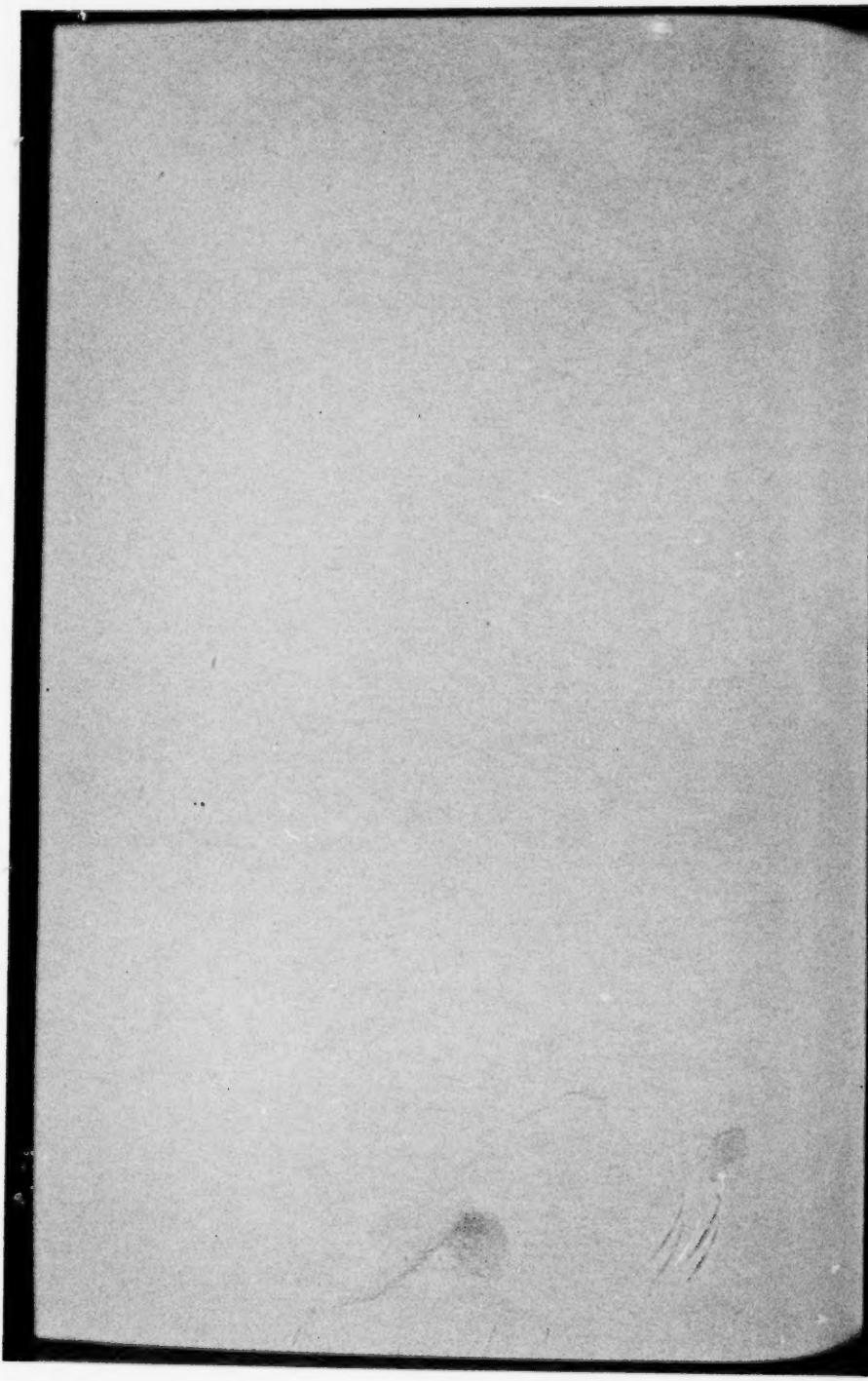
MASONIC BUILDING COMPANY,

Respondent.

BRIEF OF RESPONDENT

W. INMAN CURRY,
JEFF D. CURRY,
Augusta, Georgia
CURRY & CURRY,
12-19 S. F. C. Building,

ATTORNEYS FOR RESPONDENT.



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APPLICATION TO THE SUPREME COURT OF THE UNITED STATES

FOR A WRIT OF CERTIORARI

FROM THE DECISION OF THE FIFTH CIRCUIT COURT OF APPEALS AFFIRMING THE JUDGEMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA.

WOODY JOHNSON, WILLIE MACK, BEATRICE STEWART WALKER, WILLIE PHILPOT, ROSE W. HAWKINS, WILLIE MAE BARNES, LAWRENCE ENGLISH, GERTRUDE HAWKINS, ETHEL COLEMAN, EDDIE GARDNER, IRMA MACK, EUGENE GARDNER, AND LILLIAN MADISON.

PETITIONERS

VS.

MASONIC BUILDING COMPANY,

RESPONDENT.

STATEMENT OPPOSING GRANTING OF THE WRIT OF CERTIORARI

The Masonic Building Company files this its statement in opposition to petitioners' application for writ

of certiorari, and respectfully submits that the writ should not be granted for the following reasons:

(a) The burden of proof is on the plaintiff employees, and they did not carry this burden.

(b) The pleadings failed to allege and the evidence completely and entirely failed to show that any goods were manufactured, processed, or produced in the building, and without such pleadings and evidence there could be no verdict for the plaintiffs.

(c) The evidence completely and entirely failed to show that any of the plaintiff employees ever directly rendered a service to any tenant in the building who was engaged in interstate commerce, and without this evidence no verdict could be had for the plaintiffs.

(d) The evidence completely and entirely failed to show the number of hours worked and the wages received by the plaintiff employees, and without this evidence no verdict could be had for the plaintiffs.

(e) The evidence completely and entirely failed to show what part of plaintiff employees' work was done in intrastate and what part was in interstate.

(f) The Fair Labor Standards Act applies to employees engaged in interstate commerce and not to those employees whose activities merely affect or facilitate interstate commerce.

(g) The trial judge did not abuse his discretion in refusing to reopen the case and permit the plaintiff employees to introduce testimony which they had negligently failed to introduce on the trial of the case.